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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,541	10/30/2003	Alan M. Buckwalter	G08.047/U	7586

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EXAMINER

MERCHANT, SHAHID R

ART UNIT	PAPER NUMBER
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3694

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/697,541	Applicant(s) BUCKWALTER ET AL.	
	Examiner Shahid R. Merchant	Art Unit 3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 2-6, 10-12, 15-19, 28-34, 36-38 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 7-9, 13, 14, 20-27, 35 and 39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/30/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 1, 7-9, 13-14, 20-27, 35 and 39 in the reply filed on April 23, 2007 is acknowledged.

Priority

2. Examiner has given consideration to applicant's Provisional Application No. 60/428,462 filed on November 22, 2002 and CIP of 10/246,562 filed on September 18, 2002. For examining purposes of this application, the effective filing date will be September 18, 2002.
3. Examiner has given consideration to prior art, U.S. Patent Application Publication 2002/0194115 that was filed on April 26, 2002.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 9 and 14 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claim 9 recites the limitation "the identifying" in line 1. There is insufficient antecedent basis for this limitation in the claim.

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7. Claim 14 recites the limitation "the transaction" in line 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 1, 7, 9, 13, 14, 20 and 22-27 rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. Applicant recites a method of identifying, receiving, comparing and tabulating option order data; however there does not appear to be any useful purpose for these steps recited in the claim. Identifying data and tabulating data and storing in memory is abstract and is non-statutory.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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11. Claims 1, 7, 9, 13-14, 20, 22-27, 35 and 39 rejected under 35 U.S.C. 102(e) as being anticipated by Nordlicht et al., U.S. Patent Application Publication 2002/0194115 (see attached PTO-892, Ref. A).

12. As per claim 1, Nordlicht teaches a method comprising:

identifying an option limit order, said option limit order including information identifying a customer, information identifying a desired option, and information that indicates a limit price for said option limit order (see paragraphs 48 and 85);

receiving a substantially real time feed of option market data (see paragraphs 9-15); and

using the option market data in real time to identify a trade-at transaction relevant to said option limit order (see paragraphs 57, 82-83 and 85).

13. As per claim 7, Nordlicht teaches the method of claim 1 as described above.

Nordlicht further teaches comprising: using the identified at least one of a trade-through transaction and a trade-at transaction to tabulate at least one of trade-through data and trade-at data for a plurality of option limit orders placed by the customer; tabulating fulfillment data for the plurality of option limit orders placed by the customer; and comparing the tabulated fulfillment data to the tabulated at least one of trade-through data and trade-at data (see paragraphs 82-83, 139 and Figure 7A).

14. As per claim 9, Nordlicht teaches the method of claim 1 as described above.

Nordlicht further teaches wherein the identifying the option limit order includes receiving the option limit order (see paragraph 85).

15. As per claim 13, Nordlicht teaches the method of claim 1 as described above.

Nordlicht further teaches wherein said information identifying a desired option further includes: a type of said order, a security underlyer, an option expiration date, and a size of said order (see paragraphs 3 and 85).

16. As per claim 14, Nordlicht teaches the method of claim 1 as described above.

Nordlicht further teaches comprising: disregarding the identified at least one of a trade-through transaction and a trade-at transaction in response to a market condition in effect at a time of the transaction (see paragraph 86).

17. As per claim 20, Nordlicht teaches a method comprising:

receiving a plurality of option limit orders, each of said option limit orders including information identifying a respective desired option, and information that indicates a respective limit price for said option limit order (see paragraph 85);

tabulating at least one of trade-through data and trade-at data for the plurality of option limit orders (see paragraphs 82-83, 139 and Figure 7A);

tabulating fulfillment data for the plurality of option limit orders (see paragraphs 82-83, 139 and Figure 7A); and

comparing the tabulated fulfillment data to the tabulated at least one of trade-through data and trade-at data (see paragraphs 82-83, 139 and Figure 7A).

18. As per claim 22, Nordlicht teaches the method of claim 20 as described above. Nordlicht further teaches wherein the tabulating at least one of trade-through data and trade-at data includes purging cancelled transactions (see paragraph 139).

19. As per claim 23, Nordlicht teaches the method of claim 20 as described above. Nordlicht further teaches wherein the at least one of trade-through data and trade-at data corresponds only to transactions occurring on a leading exchange (see paragraph 3).

20. As per claim 24, Nordlicht teaches the method of claim 20 as described above. Nordlicht further teaches wherein the tabulating at least one of trade-through and trade-at data includes carrying over open option limit orders from a previous trading day (see paragraphs 51-56).

21. As per claim 25, Nordlicht teaches the method of claim 20 as described above. Nordlicht further teaches wherein the tabulating at least one of trade-through data and trade at data includes tabulating at least one of trade-through data and trade-at data that pertains to a single customer (see paragraphs 138-139).

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22. As per claim 26, Nordlicht teaches the method of claim 20 as described above. Nordlicht further teaches wherein the tabulating at least one of trade-through data and trade at data includes tabulating at least one of trade-through data and trade-at data that pertains to option limit orders routed to a single exchange (see paragraphs 34-49).

23. As per claim 27, Nordlicht teaches the method of claim 20 as described above. Nordlicht further teaches wherein the tabulating at least one of trade-through data and trade-at data and the tabulating fulfillment data are performed with respect to each trading day (see paragraphs 138-139).

24. Claims 35 and 39 recite similar limitations to claim 20 and thus rejected using the same art and rationale in the rejection of claim 20 as set forth above (see also paragraphs 29-33).

Claim Rejections - 35 USC § 103

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claims 8 and 21 rejected under 35 U.S.C. 103(a) as being unpatentable over Nordlicht et al., U.S. Patent Application Publication 2002/0194115 (see attached PTO-892, Ref. A) in view of Official Notice.

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27. As per claim 8, Nordlicht teaches the method of claim 7 as described above.

Nordlicht does not explicitly teach wherein the comparing includes dividing the tabulated fulfillment data by the tabulated at least one of trade-through data and trade-at data.

Official Notice is taken that tabulating and dividing data is well known in the art for the purpose of displaying information to a user in an easy to read format.

Therefore, it would be prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Nordlicht and Official Notice because it allows one to better organize information in an easy to read format.

28. As per claim 21, Nordlicht teaches the method of claim 20 as described above.

Nordlicht does not explicitly teach wherein the comparing includes dividing the tabulated fulfillment data by the tabulated at least one of trade-through data and trade-at data.

Official Notice is taken that tabulating and dividing data is well known in the art for the purpose of displaying information to a user in an easy to read format.

Therefore, it would be prima facie obvious to a person of ordinary skill in the art at the time of the invention to combine the teachings of Nordlicht and Official Notice because it allows one to better organize information in an easy to read format.

Conclusion

The Examiner has cited particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid R. Merchant whose telephone number is 571-270-1360. The examiner can normally be reached on First Friday Off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammel can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SRM



JELLA COLBERT
PRIMARY EXAMINER